

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

HERMAN TAYLOR, SR.

PLAINTIFF

v.

CIVIL ACTION NO. 3:16-cv-84 DPJ-FKB

BRANDON NURSING AND
REHABILITATION CENTER, LLC;
AND JOHN AND JANE DOES 1-10

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Brandon Nursing and Rehabilitation Center, LLC ("Brandon") files this Notice of Removal of the civil action styled *Herman Taylor, Sr. v. Brandon Nursing and Rehabilitation Center, LLC*; No. 2015-243, from the Circuit Court of Rankin County, Mississippi, to the United States District Court for the Southern District of Mississippi, Northern Division. In support of this Notice, Brandon states the following:

1. On November 25, 2015, Plaintiff Herman Taylor, Sr. filed this action alleging medical negligence. The lawsuit arises out of the care and treatment provided to Plaintiff while a resident of Brandon. According to the Complaint, Plaintiff suffered injuries as a result of Brandon's alleged negligence.

2. Plaintiff served Brandon with a copy of a Summons and Complaint on January 8, 2016. *See* Exhibit A.¹ This Notice of Removal is filed within thirty days of receipt of the Summons and Complaint and is timely under 28 U.S.C. § 1446(b).

¹ Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons served on Brandon is included in Exhibit A.

3. Venue is proper in the United States District Court for the Southern District of Mississippi, Northern Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(b)(1).

4. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between Plaintiff and Brandon.

5. It is apparent that the amount in controversy requirement is met because Plaintiff alleges that he broke his hip, causing him to incur medical expenses and to experience pain and suffering. *Felton v. Greyhound Lines, Inc.*, 324 F. 3d 771, 774 (5th Cir. 2003) (plaintiff who suffered fractured hip and alleged pain and suffering satisfied amount in controversy).

6. Further, Plaintiff seeks punitive damages, which would satisfy the amount in controversy requirement. *Sun Life Assur. Co. v. Fairley*, 485 F. Supp. 2d 731, 735 (S.D. Miss. 2007) ("[F]ederal courts in Mississippi have consistently held that a claim for an unspecified amount of punitive damages is deemed to exceed the federal jurisdictional minimum."), citing *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998)).

7. Diversity of citizenship exists because Plaintiff alleges to be a citizen of Mississippi, and Brandon is not a citizen of Mississippi. Compl. at ¶ 1. As set forth in detail below, Brandon Nursing and Rehabilitation Center, LLC is a Mississippi limited liability company none of whose members are citizens of Mississippi. Therefore, Brandon is not a citizen of Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (the citizenship of an LLC is that of all its members).

8. Brandon Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

9. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

10. Further, while Plaintiff has named John and Jane Does 1-10 as Brandon's co-defendants, the citizenship of a defendant sued under a fictitious name is not considered in evaluating the propriety of removal. *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470, 475 (5th Cir. 2001) ("For purposes of removal, . . . the citizenship of defendants sued under fictitious names shall be disregarded.").

11. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

12. In accordance with 28 U.S.C. § 1446(d), the Rankin County Circuit Court and Plaintiff's counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit B.

WHEREFORE, Brandon Nursing and Rehabilitation Center, LLC, requests that the above-captioned action now pending in Rankin County Circuit Court be removed to the United States District Court for the Southern District of Mississippi, Northern Division, and that the District Court assume jurisdiction over this lawsuit.

This, the 5th day of February, 2016.

Respectfully submitted,

BRANDON NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following counsel of record:

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COUNSEL FOR PLAINTIFF

This the 5th day of February, 2016.



D. STERLING KIDD